

**E N D O R S E M E N T**

SUPER VISION INTERNATIONAL, INC. v. COLOR KINETICS, INC.  
04-CV-12631-MEL

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LASKER, D.J.

Color Kinetics moves, on an emergency basis, for a protective order enjoining Super Vision from taking the deposition of non-party individual Timothy Holmes, a former employee of Color Kinetics presently residing in Florida. The deposition of Mr. Holmes is noticed for June 30, 2005, to be taken in Jacksonville, Florida.

I do not dispute that under Fed. R. Civ P. 45 the U.S. District Court for the Middle District of Florida, which issued the notice and subpoena *duces tecum*, is the authority for resolving contentions arising directly from the subpoena of the non-party. However, pursuant to Fed. R. Civ. P. 26(c) this Court, in which the present action is pending, has the authority to rule on a motion for a protective order in relation to discovery disputes.

Since there is currently pending in this action a motion to dismiss the complaint in its entirety, it would be imprudent to permit the taking of depositions, and thus discovery, until a determination upon the motion to dismiss has been reached.

Accordingly, Color Kinetics' motion for a protective order is GRANTED to the extent that Super Vision is enjoined from taking the deposition of Mr. Holmes until disposition of the motion to dismiss and a reasonable period of time thereafter has passed. This ruling is without prejudice to later consideration by the Court of the appropriateness of taking Mr. Holmes' deposition.

It is so ordered.

Dated: June 23, 2005  
Boston, Massachusetts

/s/ Morris E. Lasker  
U.S.D.J.